

## **EXHIBIT 2**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DAVID BUSBY, )  
 )  
Defendant. )

No. CR 11-0188 SBA

**DECLARATION OF JAMES  
WELCHER IN SUPPORT OF THE  
UNITED STATES' OPPOSITION TO  
DEFENDANT'S MOTION TO  
SUPPRESS**

Date: September 13, 2011  
Time: 11:00 a.m.

I, James Welcher, declare as follows:

1. I am employed by the Lawrence Berkeley National Laboratory (LBL) and have been so employed for 5 years. I currently work in the Cyber Security group for the Information Technology Division at LBL. My responsibilities involve providing computer network security at LBL and include helping to develop, maintain, and implement policies to keep LBL's network secure.

2. All employees at LBL are required (and were required in April 2010) to take a yearly cyber security refresher course. The course requires users to acknowledge that they understand LBL's network policies, including that all use of LBL computing and communications resources by all users is subject to monitoring and that no user of LBL systems

1 has any expectation of privacy in their use of these systems.

2 3. As additional notice to users, standard network security policy banners are  
3 displayed on LBL computers. These banners advise users that their use of LBL's computers and  
4 network is subject to monitoring, and these banners were required to be displayed in April 2010.

5 a. The standard banner displayed on all computers running a Windows based  
6 or UNIX based operating system is as follows:

7 \*\*\*\*\* NOTICE TO USERS \*\*\*\*\*

8 Lawrence Berkeley National Laboratory operates this computer  
9 system under a contract with the U.S. Department of Energy. It is the  
10 property of the United States Government and is for authorized use  
11 only. The use of this system may be monitored for computer security  
12 purposes. Any unauthorized access to this system is prohibited and is  
13 subject to criminal and civil penalties under Federal Laws including  
14 but not limited to Public Laws 83-703 and 99-474. Each time you use  
15 this system (from here, from home, or on your personal laptop  
16 connected to an LBNL system), you consent to such interception,  
17 auditing, and related activity by authorizing personnel; further, LBNL  
18 may detain, access, and copy files from a non-LBNL computer when  
19 there is reason to believe misuse has occurred.

20 \*\*\*\*\* NOTICE TO USERS \*\*\*\*\*

21 b. The standard banner displayed on all computers running a Macintosh  
22 based operating system is as follows:

23 This system may be monitored for computer security purposes.  
24 Unauthorized access to this system is prohibited. Use of this system  
25 implies consent to such interception, auditing, and related activity by  
26 LBL personnel.

27 4. During April 2010, David Busby was employed in the Information Technology  
28 Division at LBL and was responsible for maintaining the network security policy banners for

1 certain user groups at LBL and all of the LBL computers in his custody or designated for his use.

2 I declare under penalty of perjury under the laws of the United States that the foregoing is  
3 true and correct to the best of my knowledge and belief. Executed at Berkeley, California on July  
4 31, 2011.

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7 JAMES WELCHER  
8 Lawrence Berkeley National Laboratory  
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